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IN THE

Supreme Court of the United States

October Term, 1942.

No. 603

STATE OF OHIO, on the relation of S. H. SQUIRE, Superintendent of Banks in Charge of the Liquidation of The Union Trust Company of Cleveland, Ohio,

Petitioner,

vs.

CLARENCE H. PORTER,

Respondent,

Petition for Writ of Certiorari to the Supreme Court of the State of California, and Brief in Support Thereof.

WILLIAM C. MATHES,
640 Rowan Building, Los Angeles,
Counsel for Petitioner.

THOMAS J. HERBERT,
Attorney General of the State of Ohio;

E. S. LINDEMANN,
Special Counsel to the Attorney General of the State of Ohio;

MATHES & SHEPPARD and
GORDON F. HAMPTON,
of Counsel.

Parker & Baird Company, Law Printers, Los Angeles

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IN THE

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No. .....

STATE OF OHIO, on the relation of S. H. SQUIRE, Superintendent of Banks in Charge of the Liquidation of The Union Trust Company of Cleveland, Ohio,

Petitioner,

vs.

CLARENCE H. PORTER,

Respondent,

Petition for Writ of Certiorari to the Supreme Court of the State of California.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The Superintendent of Banks of the State of Ohio respectfully petitions that a writ of certiorari issue to review the final judgment of the Supreme Court of the State of California in that certain cause entitled "*State of Ohio, on the Relation of S. H. Squire, Superintendent of Banks in Charge of the Liquidation of The Union Trust Company of Cleveland, Ohio, Plaintiff and Respondent, vs. Clarence H. Porter, Defendant and Appellant,*" and numbered "L. A. No. 18302" on the records of said state court.

A. The Opinions of the Courts Below.

The opinion of the California Supreme Court in this cause was filed October 2, 1942, and is reported at 21 Adv. Cal. 46, 129 P. (2d) 691; it is also set forth at R. 56-63. The opinion in the companion cases is reported in 21 Adv. Cal. 59, 129 P. (2d) 698, and is set forth at R. 69-71.

The California Supreme Court, with two of the Justices dissenting [R. 63-69], reversed the judgment of the Superior Court for Los Angeles County in favor of the petitioner here, the plaintiff below. The trial court's opinion is not reported, but its judgment appears at R. 14.

The hearing in the state supreme court followed an appeal by the defendant below, the respondent here, to the District Court of Appeal [R. 15]. The opinion of that intermediate appellate court, which also reversed the judgment of the trial court, was filed January 15, 1942. Since the case was later transferred to the California Supreme Court for hearing and determination, this opinion is not officially reported. However, it is unofficially reported at 49 Adv. Cal. App. 224, 121 P. (2d) 538; it is also set forth at R. 44-54.

B. Summary Statement of the Matter Involved.

This is an action against a California stockholder of The Union Trust Company of Cleveland, Ohio, to recover upon a double liability assessment levied against stockholders by the Ohio Superintendent of Banks as statutory liquidator. The facts are stipulated [R. 20-34]. The Union Trust Company was a state bank organized under the banking laws of Ohio [R. 22]. The outstanding capi-

tal stock consisted of 914,000 shares of $25 par value [R. 25]. The respondent, Clarence H. Porter, was at all times material here the owner and holder of 560 shares [R. 27-28].

On February 27, 1933, The Union Trust Company was unable to meet its obligations in the regular course of business and declined to permit the withdrawal of more than five per cent of any deposit [R. 23, 29-32]. The bank thereafter continued to operate upon this restricted basis by direction of the Superintendent of Banks [R. 23, 32-33]. On April 8, 1933, the Superintendent of Banks appointed a conservator "for the purpose of conserving its business and assets pending further disposition thereof as provided by law" [R. 23-24, 33-34].

On June 15, 1933, the Superintendent of Banks determined that The Union Trust Company was in an unsound condition to transact a banking business and thereupon took possession for the purpose of liquidation [R. 24].

On July 30, 1934—following various investigations, audits, accountings and evaluations—the superintendent found that the bank's liabilities exceeded its assets to the extent of more than $25,000,000 [R. 25, 34]. The aggregate par value of the outstanding capital stock of The Union Trust Company amounted to $22,850,000 [R. 25]. Accordingly, the superintendent thereupon determined, by reason of the deficiency, that it was necessary to assess the individual liability of the stockholders at one hundred per cent of the par value of the shares [R. 25-26, 34].

Thereafter and on July 30, 1934, the Ohio Superintendent of Banks levied an assessment of one hundred per cent against all stockholders of The Union Trust Company [R.

25-26, 34]. On August 1, 1934, the superintendent caused notice of the assessment to be mailed to all stockholders, requesting payment on or before November 1, 1934 [R. 26, 34].

On May 29, 1936, Porter had failed to pay his assessment and was residing in California. On that date, the Ohio Superintendent of Banks commenced this action upon the assessment by filing his complaint in the Superior Court for Los Angeles County [R. 1-7, 28].

Porter answered [R. 10-12], setting up as an affirmative defense the contention that enforcement of the assessment in California was precluded by the provisions of Section 359 of the California Code of Civil Procedure, which provides that "such actions must be brought within three years after . . . the liability was created."

The trial court rendered judgment against Porter for the full amount of the assessment [R. 14, 28]. Porter then appealed to the District Court of Appeal [R. 15]. That court reversed the judgment [R. 44]. Thereafter, upon petition of the Ohio Superintendent of Banks, the California Supreme Court ordered the cause transferred there and likewise reversed the judgment of the trial court [R. 55, 56].

Because the California Supreme Court refused to give full faith and credit to the Ohio assessment, and denied to the Ohio Superintendent of Banks privileges and immunities accorded the California Superintendent of Banks on parallel facts, the Ohio Superintendent seeks review in this Honorable Court.

C. Jurisdictional Statement.

In support of the jurisdiction of this Honorable Court to review the cause by writ of certiorari, the petitioner respectfully represents (Rule 12, par. 1):

(1) Statutory Provision Sustaining Jurisdiction.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 937; 28 U. S. C. Section 344(b) (1934).

That this is a "cause wherein a final judgment . . . has been rendered . . . by the highest court of a state in which a decision could be had" is shown by the provisions of Article VI, Sections 1 and 4, of the California Constitution (Cal. Stats. (1929) pp. xxi, xxiii) and Rules XXI and XXX of the Rules of the California Supreme Court, which are quoted in Appendix A [R. 56].

By this judgment there is drawn in question the validity of Section 359 of California's Code of Civil Procedure[1] as applied to the petitioner's statutory cause of action upon the Ohio assessment. As applied by the California Supreme Court in this cause, said Section 359 is repugnant to Article IV, Sections 1 and 2, of the Constitution of the United States—the full faith and credit and the privileges and immunities clauses [R. 63-69].

Furthermore, the petition specially set up and claimed in the courts of California certain title, and certain rights, privileges and immunities, by virtue of Sections 1 and 2

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[1]Code of Civil Procedure of the State of California (1872), p. 93, §359; Deering (1941), p. 152, §359.

of Article IV—namely that the integrity of the Ohio assessment sued upon, and the force of the Ohio statutes upon which the petitioner's cause of action is predicated, are guaranted by those clauses of the Constitution.

(2) The Validity of a State Statute Is Involved.

As stated, the validity of Section 359 of the California Code of Civil Procedure is involved. (Code of Civil Procedure of the State of California (1872), p. 93, §359; Deering (1941), p. 152, §359.

The validity of that statute, as applied in this cause, has been upheld by a majority of the justices of the California Supreme Court [R. 56, 61, 63]. Closely connected with Section 359 is Section 312 of the same code. Both appear under the same title, "Time of Commencing Civil Actions"; and 312 is the first section under that title.

Section 312 provides:

> "Civil actions, without exception, can only be commenced within the periods prescribed in this title, after the cause of action shall have *accrued*, unless where, in special cases, a different limitation is prescribed by statute."

Section 359 provides:

> "This title does not affect actions against directors or stockholders of a corporation, to recover a penalty or forfeiture imposed, or to enforce liability created by law; but such actions must be brought within three years after the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached, or the liability was *created*."

(3) The Date of the Judgment.

October 2, 1942 is the date of filing of the judgment of the California Supreme Court sought to be reviewed [R. 56]. Thirty days later, on November 1, 1942, this judgment became final (Cal. Sup. Ct. Rules XXI and XXX, Appendix A); and the remittitur issued on November 6, 1942 [R. 72].

(4) Nature of Case and Ruling Below.

The ruling of the California Supreme Court brings this cause within the jurisdictional provisions relied upon (§237(b) of the Judicial Code as amended by the Act of Feb. 13, 1925, Chap. 229, §1, 43 Stat. 937; 28 U. S. C. §344(b) (1934).) No factual determination was necessary, for the cause was submitted upon a written stipulation [R. 14, 20]. Section 1875(3) of the Code of Civil Procedure permits the courts of California to take judicial notice of the laws of other states and of the United States.[2] And the stipulation of facts in this cause so provides with respect to the law of Ohio [R. 28-29].

The assessment sued upon was levied July 30, 1934, by the Ohio Superintendent of Banks against the stockholders of The Union Trust Company of Cleveland in accordance with the statutes of Ohio [R. 25-26, 34]. The petitioner's cause of action arises by force of Section 710-75 of the General Code of the State of Ohio (108 Ohio Laws (1919) 97, §75) providing:

> "Stockholders of banks shall be held individually responsible, equally and ratably, and not one for

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[2]Code of Civil Procedure of the State of California (1872), p. 492, §1875 (3), as amended by Cal. Stats. (1927), p. 110; Deering (1941), pp. 643-644, §1875 (3).

> another, for all contracts, debts and engagements of such bank, to the extent of the amount of their stock therein, at the par value thereof, in addition to the amount invested in such shares. . . . At any time after taking possession of the bank for the purpose of liquidation when the superintendent of banks ascertains that the assets of such bank will be insufficient to pay its debts and liabilities he may enforce the individual liability of the stockholders."

Section 710-95 of the Ohio General Code (108 Ohio Laws (1919) 103, §95) contains further provision for the determination and enforcement of the stockholders' liability. Both Section 710-75 and Section 710-95, and Article XIII, Section 3, of the Ohio Constitution, pursuant to which these statutes were enacted, are hereinafter set forth as Appendix B. Together, they constitute the material provisions of the Ohio law upon which the petitioner's cause of action is grounded.

The petitioner brought this action on May 29, 1936, to enforce payment by a California stockholder of the assessment so levied under Ohio law [R. 28]. The California Supreme Court held that the action was precluded by the provisions of Section 359 of California's Code of Civil Procedure which states that "such actions must be brought within three years after . . . the liability was created" [R. 56, 60, 63].

Inasmuch as the petitioner's action was admittedly brought within three years after the levy of the assessment sued upon, the California Supreme Court necessarily went behind the assessment and commenced the operation of Section 359 prior to the existence of the Ohio statutory cause of action sought to be enforced. Specifically, the

holding was that "the liability upon which the present action was based certainly was created at least as early" as February 27, 1933, when The Union Trust Company commenced restricting the withdrawal of deposits [R. 60, 66].

Thus the California Supreme Court refused to recognize that the Ohio Superintendent's suit was founded upon the assessment; refused to recognize that, by force of the Ohio statutes, the action of the Ohio Superintendent in levying the assessment on July 30, 1934, gave rise to a statutory obligation enforcible against all stockholders of The Union Trust Company. Furthermore, the judgment of the California Supreme Court ignores the fact that the courts of Ohio have consistently recognized and enforced the obligation of assessments similarly levied by the Ohio Superintendent of Banks;[3] in fact, have on more than one occasion recognized and enforced, at the suit of the superintendent, the identical assessment sued upon in this cause.[4]

Hence the decision of the state court constitutes a refusal by California to give the "public acts" of Ohio the

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[3]*Squire v. Standen*, 135 Ohio St. 1, 18 N. E. (2d) 608 (1939); *Squire v. Solinski*, 132 Ohio St. 180, *sub nom Squire v. Borton & Borton*, 5 N. E. (2d) 479 (1936); *State v. Murfey, Blossom & Co.*, 131 Ohio St. 289, 2 N. E. (2d) 866 (1936); *Lien v. Fechheimer*, ... Ohio App. ....., 44 N. E. (2d) 265 (1942); *State v. Cruikshank*, 51 Ohio App. 61, 199 N. E. 611 (1935); *Baumgardner v. State*, 48 Ohio App. 5, 21; 192 N. E. 349, 357 (1934).

[4]*Squire v. Standen*, 135 Ohio St. 1, 18 N. E. (2d) 608 (1939); *S. H. Squire, Supt. of Banks v. Abbott*, 8 Ohio Ops. 134 (1937).

full faith and credit required by Article IV, Section 1, of the Federal Constitution. The federal right asserted by the petitioner has been denied by the highest court of California, and a substantial question of constitutional law thus has arisen.

The decisions require full faith and credit to be given in the courts of California to the assessment levied by the petitioner pursuant to the statutes of Ohio, thereby sustaining the jurisdiction of this Honorable Court in this cause:

Broderick v. Rosner, 294 U. S. 629, 55 S. Ct. 589, 79 L. ed. 1100 (1935);

Chandler v. Peketz, 297 U. S. 609, 56 S. Ct. 602, 80 L. ed. 881 (1936);

Converse v. Hamilton, 224 U. S. 243, 32 S. Ct. 415, 56 L. ed. 749 (1912).[5]

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[5]To the same effect are:

Titus v. Wallick, 306 U. S. 282, 292; 59 S. Ct. 557, 83 L. ed. 653, 660 (1939);

Sovereign Camp v. Bolin, 305 U. S. 66, 59 S. Ct. 35, 83 L. ed. 45 (1938);

Adam v. Saenger, 303 U. S. 59, 58 S. Ct. 454, 82 L. ed. 649 (1938);

John Hancock Mutual Life Ins. Co. v. Yates, 299 U. S. 178, 57 S. Ct. 129, 81 L. ed. 106 (1936);

Milwaukee County v. M. E. White Co., 296 U. S. 268, 56 S. Ct. 229, 80 L. ed. 220 (1935);

Roche v. McDonald, 275 U. S. 449, 48 S. Ct. 142, 72 L. ed. 365 (1928);

Marin v. Augedahl, 247 U. S. 142, 38 S. Ct. 452, 62 L. ed. 1038 (1918);

Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641, 52 L. ed. 1039 (1908);

Glenn v. Liggett, 135 U. S. 533, 10 S. Ct. 867, 34 L. ed. 262 (1890);

Christmas v. Russell, 5 Wall. 290, 18 L. ed. 475 (1866);

cf. Rankin v. Barton, 199 U. S. 228, 26 S. Ct. 29, 50 L. ed. 163 (1905).

Although holding that "the liability upon which the present action was based . . . was created" before the assessment sued upon came into existence [R. 60], the California Supreme Court admitted that as to a California assessment the liability would be held to be "created", within the meaning of Section 359 of the California Code of Civil Procedure, at the time the assessment was levied [R. 62]; that if this cause involved an assessment levied by the California Superintendent of Banks against stockholders of a California state bank, the liability would be held to be "created" when the California assessment was levied—and at no earlier date.[6]

The California Supreme Court thus denied to the petitioner in this cause the privileges and immunities which that court accords the California Superintendent of Banks under like circumstances. And since the privileges and immunities guaranteed by the Federal Constitution (Art. IV, §2) include "the right to the usual remedies for the collection of debts",[7] the action of the California Supreme Court also abridges the petitioner's constitutional rights in that respect.

Accordingly, this cause presents a second substantial question of constitutional law involving the privileges and immunities guaranteed by Article IV, Section 2; and it would seem clear in principle that the California Supreme Court has decided the question "in a way probably not in accord with applicable decisions of this court,"

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[6] *Richardson v. Craig*, 11 Cal. (2d) 131, 77 Pac. 1077 (1938).

[7] *Maxwell v. Bugbee*, 250 U. S. 525, 537; 40 S. Ct. 2, 63 L. ed. 1124, 1130 (1919).

although it is believed that the precise question has not heretofore been determined by this Honorable Court.

See:

McKnett v. St. Louis & S. F. Ry. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. ed. 1227 (1934);

Blake v. McClung, 172 U. S. 239, 19 S. Ct. 165, 43 L. ed. 432 (1898);

Ward v. Maryland, 12 Wall. 418, 20 L. ed. 449 (1871).[8]

The petitioner therefore asserts that this cause involves federal questions of substance calling for review on writ of certiorari pursuant to Rule 38, paragraph 5(a), in this:

First: That the California Supreme Court has decided in this cause a substantial question under the full faith and credit clause (U. S. Const. Art. IV, §1) in a way not in accord with applicable decisions of this Court [R. 61, 67];

Second: That the California Supreme Court has also decided in this cause a substantial question under the privileges and immunities clause (U. S. Const. Art. IV, §2) in a way probably not in accord, in principle, with applicable decisions, although it appears that the precise question has not heretofore been determined by this Court [R. 62, 63].

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[8]To the same effect are:

Douglas v. New York, N. H. & H. R. R. Co., 279 U. S. 377, 49 S. Ct. 355, 73 L. ed. 747 (1929);

Chambers v. Baltimore & O. R. R. Co., 207 U. S. 142, 28 S. Ct. 34, 52 L. ed. 143 (1907);

Miles v. Ill. Central R. R. Co., 315 U. S. 698, 62 S. Ct. 827, 86 L. ed. (Adv. Ops.) 766 (1942).

(5) Substantial Federal Questions Are Involved.

Upon the grounds hereinabove set forth under (4) "Nature of Case and Ruling Below", the petitioner asserts that the federal questions decided by the California Supreme Court in this cause are substantial in character.

(6) The Federal Questions Were Raised in the Courts Below.

In accordance with California practice, the constitutional questions sought to be reviewed were raised at the trial and in the brief submitted by the petitioner to the trial court [R. 52; Appendix C]. And the trial court based its judgment in favor of the petitioner upon the ground that California was compelled to give full faith and credit to the "public acts" of Ohio and, therefore, could not disregard the statutory obligation sued upon [R. 52].

The California District Court of Appeal reversed the judgment of the trial court [R. 44, 52], stating:

> "Respondent argues at length that, under the full faith and credit clause, our California courts must enforce the finding of the Ohio superintendent in which he assessed the liability by the defendant stockholder . . . . This is not necessary . . . ." [R. 53-54.]

Again, in the California Supreme Court the constitutional questions were argued and presented in the briefs of the petitioner; but that court likewise denied the petitioner's contentions, stating:

> "The plaintiff contends that the suit is on the 'assessment'; that the 'assessment' is a 'public act' with-

in the scope of article IV, section 1 of the federal Constitution and must be accorded full faith and credit; . . . that such result is in accord with *Richardson v. Craig*, 11 Cal. (2d) 131 (77 P. (2d) 1077), which holds that the liability is created at the time of the assessment; and that to give a different interpretation of the Ohio law would be to violate article IV, section 2 of the United States Constitution, providing that the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

* * * * * * * *

"To give proper effect to the Ohio law in this case obviously is not a violation of the privileges and immunities clause of the United States Constitution. The time limitation of said section 359 is applied uniformly to compute the applicable period of limitation for the commencement of the action from the time the liability was created." [R. 61-62, 63.]

The California Supreme Court ruled that the Ohio Superintendent of Banks was not entitled in this cause to the same privileges and immunities as California accords to her own Superintendent of Banks under parallel circumstances [R. 67].

The state supreme court further ruled that the courts of California are not compelled by the full faith and credit clause (U. S. Const. Art. IV, §1) to enforce—as do the Ohio courts—the obligation arising under the statutes of Ohio in the form of the assessment of July 30, 1934; and that therefore the California courts will look behind the assessment sued upon in order to hold the petitioner's cause of action precluded by Section 359 of the California Code of Civil Procedure [R. 60, 61, 63].

The dissenting justices were of the opinion that the courts of California could not thus ignore the Ohio statutory obligation but must give to the assessment the same faith and credit as accorded by the courts of Ohio [R. 67-69].

D. Questions Presented for Review.

The following questions are presented for review in this cause:

(1) In an action brought in California by the Ohio Superintendent of Banks against a California stockholder of an Ohio state bank to recover upon a double liability assessment levied against stockholders pursuant to Ohio statutes, does not the refusal of the California courts to recognize and enforce the Ohio assessment constitute a denial of the full faith and credit required to be given to "public acts" of a sister state by Article IV, Section 1, of the Constitution of the United States?

(2) In such action, where it appears that under the law of Ohio the levy of the assessment gave rise to a statutory obligation enforcible against the stockholders at the suit of the Ohio Superintendent of Banks, does not the full faith and credit clause (U. S. Const. Art. IV, §1) compel the courts of California to recognize and enforce the statutory obligation sued upon?

(3) In such action, where it appears that the courts of Ohio have recognized and enforced, at the suit of the Ohio Superintendent of Banks, the identical assessment sued upon in California, does not the application of Section 359 of the California Code of Civil Procedure so as to preclude the suit by resorting to a lapse of time prior to

the existence of the Ohio Superintendent's cause of action constitute a denial of the full faith and credit required (U. S. Const. Art. IV, §1) to be given to the "public acts" of Ohio?

(4) Where such action was brought within three years after the levy of the assessment which gave rise to the Ohio Superintendent's statutory cause of action, does not the application of Section 359 of the California Code of Civil Procedure—providing that "such actions must be brought within three years after . . . the liability was created"—so as to bar the action by going behind the assessment and commencing the operation of Section 359 prior to the existence of the obligation sought to be enforced constitute a denial by the California courts of the full faith and credit required by Article IV, Section 1, of the Federal Constitution?

(5) Does not the California Supreme Court's ruling that the Ohio Superintendent of Banks is not entitled to the same privileges and immunities as the courts of California accord to the California Superintendent of Banks under parallel circumstances constitute a violation of Article IV, Section 2, of the Constitution of the United States?

(6) Since the courts of California—in applying Section 359 of the California Code of Civil Procedure to an action brought by the California Superintendent of Banks to recover upon a double liability assessment levied against stockholders of a California state bank—refuse to invoke against the California Superintendent a lapse of time prior to the levy of his assessment, does not the California Supreme Court's decision invoking a lapse of time prior to the levy of the Ohio Superintendent's assess-

ment, and thus applying Section 359 so as to preclude his cause of action grounded upon parallel facts, constitute an unwarranted discrimination abridging the privileges and immunities guaranteed by Article IV, Section 2, of the Federal Constitution?

E. Reasons for Granting the Writ and Specification of Errors.

The writ prayed for should be allowed for the following reasons:

(1) The California Supreme Court erred in its decision:

(a) By disregarding that under Ohio law the assessment sued upon in this cause gave rise to a statutory cause of action in favor of the Ohio Superintendent of Banks and a correlative statutory liability on the part of the stockholders;

(b) By ignoring that the Ohio Superintendent's cause of action, under Ohio law, is grounded upon the statutory assessment:

(c) By refusing to give to the Ohio assessment the same faith and credit in the courts of California as by law and usage is given to such an order in the courts of Ohio; and

(d) By thus denying full faith and credit to the "public acts" of Ohio, as required by Article IV, Section 1, of the Constitution of the United States.

The California Supreme Court completely ignored in its opinion the case of *Broderick v. Rosner*, 294 U. S. 629, 55 S. Ct. 589, 79 L. ed. 1100 (1935), where this

Honorable Court held, under circumstances analogous to those at bar, that on the pretext of regulating procedure a state's refusal to enforce a statutory assessment coming from another state constitutes a denial of full faith and credit to the "public acts" of the sister state.

Other similar and important decisions of this Court which the majority opinion of the state supreme court likewise ignores, and which compel California to recognize and enforce the statutory assessment upon which this action is grounded, include:

Chandler v. Peketz, 297 U. S. 609, 56 S. Ct. 602, 80 L. ed. 881 (1936);

Marin v. Augedahl, 247 U. S. 142, 38 S. Ct. 452, 62 L. ed. 1038 (1918);

John Hancock Mutual Life Ins. Co. v. Yates, 299 U. S. 178, 57 S. Ct. 129, 81 L. ed. 106 (1936);

Sovereign Camp v. Bolin, 305 U. S. 66, 59 S. Ct. 35, 83 L. ed. 45 (1938).

The decision of the Supreme Court of the State of California in this cause conflicts with the foregoing decisions of this Honorable Court.

(2) The California Supreme Court also erred in applying Section 359 of the California Code of Civil Procedure so as to preclude the Ohio Superintendent's suit by going behind the Ohio statutory assessment as if it did not exist and resorting to a lapse of time prior to the existence of the cause of action sued upon.

To bar an obligation entitled to full faith and credit, by invoking a lapse of time prior to the existence of the

cause of action, is manifestly unconstitutional. This is established by decisions ignored by the majority opinion of the California court:

Christmas v. Russell, 5 Wall. 290, 18 L. ed. 475 (1866);

Glenn v. Liggett, 135 U. S. 533, 10 S. Ct. 867, 34 L. ed. 262 (1890);

Fauntleroy v. Lum, 210 U. S. 230, 28 S. Ct. 641, 52 L. ed. 1039 (1908);

Roche v. McDonald, 275 U. S. 449, 48 S. Ct. 142, 72 L. ed. 365 (1928);

Milwaukee County v. M. E. White Co., 296 U. S. 268, 56 S. Ct. 229, 80 L. ed. 220 (1935);

cf. Rankin v. Barton, 199 U. S. 228, 26 S. Ct. 29, 50 L. ed. 163 (1905).

The decision of the Supreme Court of the State of California in this cause is in conflict with the foregoing decisions of this Honorable Court.

(3) The California Supreme Court further erred in its decision in this cause by ruling that the Ohio Superintendent of Banks is not entitled to the same privileges and immunities as the courts of California accord to the California Superintendent of Banks under like circumstances. This ruling constitutes a violation of Article IV, Section 2, of the Constitution of the United States.

McKnett v. St. Louis & S. F. Ry. Co., 292 U. S. 230, 54 S. Ct. 690, 78 L. ed. 1227 (1934);

Blake v. McClung, 172 U. S. 239, 19 S. Ct. 165, 43 L. ed 432 (1898);

Ward v. Maryland, 12 Wall. 418, 20 L. ed. 449 (1871).

The decision of the Supreme Court of the State of California in this cause conflicts, in principle, with the foregoing decisions of this Honorable Court.

(4) Inasmuch as the courts of California—in applying Section 359 of the California Code of Civil Procedure to an action brought by the California Superintendent of Banks to recover upon a double liability assessment levied against stockholders of a California state bank—refuse to invoke against the California Superintendent a lapse of time prior to the levy of his assessment, the state supreme court further erred by invoking a lapse of time prior to the existence of the Ohio Superintendent's assessment, and thus applying Section 359 so as to preclude his cause of action grounded upon parallel facts.

The petitioner asserts that such unwarranted discrimination on the part of California abridges the privileges and immunities guaranteed by Article IV, Section 2, of the Federal Constitution, although it is believed that the precise question has not heretofore been determined by this Honorable Court.

Wherefore, your petitioner, the Superintendent of Banks of the State of Ohio, respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Supreme Court of the State of California, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case numbered "L. A. No. 18302" and entitled on its docket "State of Ohio, on the relation of S. H. Squire, Superintendent of Banks in Charge of the Liquidation of

The Union Trust Company of Cleveland, Ohio, *Plaintiff and Respondent, v.* Clarence H. Porter, *Defendant and Appellant*"; that the said judgment of the said Supreme Court of the State of California may be reversed by this Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

Dated: December 17, 1942.

S. H. SQUIRE,

Superintendent of Banks for the State of Ohio, in charge of the liquidation of the business and property of The Union Trust Company of Cleveland, Ohio,
Petitioner,

By WILLIAM C. MATHES,
Counsel for Petitioner.

THOMAS J. HERBERT,
Attorney General of the State of Ohio;

E. S. LINDEMANN,
Special Counsel to the Attorney General of the State of Ohio;

MATHES & SHEPPARD and
GORDON F. HAMPTON,
of Counsel.